

# THE GENERAL DUTY CLAUSE

## BACKGROUND

Public awareness of the potential danger from accidental releases of hazardous substances has increased over the years as serious chemical accidents have occurred around the world. Public concern intensified following the 1984 release of methyl isocyanate in Bhopal, India, which killed more than 2,000 people. A similar chemical release in Institute, West Virginia, sent more than 100 people to the hospital and made Americans aware that such incidents do happen in the United States.

As a result, Congress enacted legislation to help prevent accidents from occurring, and to promptly report and respond to accidents that do occur. In 1990, Congress amended the Clean Air Act (CAA) and added Section 112(r). Section 112(r) of the CAA requires that owners and operators of stationary sources identify hazards, and prevent, and minimize the effects of accidental releases whenever extremely hazardous substances are present at their facility. The *general duty clause* in Section 112(r)(1) and regulations issued pursuant to other provisions of Section 112(r) define these requirements and establish the deadlines for compliance.

## SECTION 112(R)(1):

### (r) Prevention of Accidental Releases

- (1) Purpose and General Duty - It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

## APPLICATION TO INDUSTRY

It applies to any facility where any quantities of any extremely hazardous substances are present.

The general duty clause is a performance based authority recognizing that owners and operators have primary responsibility in the prevention of chemical accidents. As part of this responsibility, many industries have developed standards and generally recognized safe practices to manage the risks associated with extremely hazardous substances. EPA believes that owners and operators who have these substances must adhere, at a minimum, to recognized industry standards and practices (as well as any government regulations) in order to be in compliance with the general duty clause. This regulation requires each facility to develop expertise in the materials they store and use in order to prevent accidental releases.

## **DIFFICULTIES WITH COMPLIANCE**

Some of the difficulties with compliance are: the broad scope of the regulation, the fact that a facility must address specific conditions that are not necessarily addressed by industry standards, that there is not a specific definition of extremely hazardous substance (it goes beyond EPA's "list"), and there is no minimum quantity of these substances necessary for regulation. Finally, there may be situations in which an existing industry standard or practice is simply inadequate to prevent accidents, and here the EPA may exercise its authority to require a company to implement additional measures to address the hazard. This can present problems as many of the smaller businesses lack the expertise and staff to effectively comply, although they continue to use these substances.

## **RESOURCES**

EPA has General Duty Clause guidance available on their website at:

<http://www.epa.gov/swercepp/pubs/gdcregionalguidance.pdf>.

## **QUESTIONS**

If you have any questions please call Gina Friedman at 222-2808 ext 7016.